

## REMARKS/ARGUMENTS

### A. Amendments to the Specification and Claims

By this Amendment, amendments have been made to three paragraphs of the specification in order to clarify certain parts of the description.

In addition, dependent claims 13, 16, 18, 21, 23, 27, 30 and 32 have been amended.

No new matter has been added by these amendments, as will be further discussed below.

In view of the “Petition Under 37 CFR 1.181 for Withdrawal of Finality of the Office Action mailed March 21, 2008 and for other necessary action” originally filed by fax on April 11, 2008, it is believed that these amendments should be entered as a matter of right, because new grounds for objection and/or rejection were improperly asserted for the first time in a final Office Action. Therefore, it is contended that the present Amendment should be treated as being filed under Rule 111, because it would be unfair and legally inappropriate to apply Rule 116 to the present Amendment.

In the alternative, if the finality of the Office Action mailed March 21, 2008 is not withdrawn, in accordance with Rule 116(b)(3), it is noted that the amendment of paragraph [0043] is necessary to address the Examiner’s alleged confusion concerning reference number 16 in the original description. This amendment was not presented earlier, because the Examiner first raised a new ground for objection or rejection (as discussed below, the legal basis for many of the new objections or rejections is not known and not readily discernable) concerning reference numeral 16 in the final Office Action. Therefore, the Applicants were not previously apprised of this ground for objection or rejection and could not therefore have previously responded to it.

The amendment of paragraphs [0047] and [0052] simply corrects obvious typographical errors and improves the clarity of the description. Therefore, this amendment also is not believed to touch on the substance of the application. Moreover, these amendments help to place the application in a better condition for appeal.

In addition or in the alternative, it is believed that these amendments are necessary in order to “comply with any requirement of form made in [the] previous Office Action”. Rule 116(b)(1). See the last paragraph of Section 1 of the final Office Action, which appears to be an objection to the form of the specification first raised in a final Office Action. Thus, these amendments are permissible under Rule 116(b)(1).

Therefore, entry of these amendments is respectfully requested at this time.

It is believed that none of these amendments of the specification introduces new matter in violation of Section 132. In addition, it is noted that several of the amendments find direct support in the original German language text of the parent International application. Therefore, Applicants reserves the right to file a declaration attesting to the support in the original German language text, if necessary and appropriate, in the event that an objection pursuant to Section 112 or 132 is made.

Support for pending claims 11-33 was originally provided at page 11 of the Preliminary Amendment filed May 23, 2006. Supplemental support for several of the claims was also provided at pages 6-8 of the Amendment filed November 15, 2007. This identified support is incorporated herein by reference, such that it is not necessary to repeat an identification of support for claims that are not amended herein.

With respect to the amended dependent claims, the following supplemental support is noted:

Claims 13, 18, 23, 27 and 32 find additional support in:

- paragraph [0042] ((second) linkage mechanism 36 for pivotably moving the convertible top compartment lid (rear roof part) 16 relative to the vehicle body, wherein linkage mechanism 30 is a representative, non-limiting example of a first linkage mechanism),

- paragraph [0043] (first and second rollers 40, 42 serving as “guide elements”, the first roller 40 being mounted on the roof part 12 and the second roller 42 being provided on the (second) linkage mechanism 36, which is supported on the vehicle body and is coupled to the convertible top compartment lid (rear roof part) 16) and

- paragraph [0052] (pivoting of convertible top compartment lid (rear roof part) 16 relative to the vehicle body via the second roller (guide element) 42 disposed on the linkage mechanism 36), as well as

Figs. 2, 4, 6, 7, 9, 11, 12, 14-18 and 20 (showing the relationships, e.g., between the convertible top compartment lid (rear roof part) 16, the (second) linkage mechanism 36, the guide elements 40, 42 and the vehicle body).

Claims 16, 21 and 30 find additional support in paragraphs [0039], [0040] and [0046]-[0048], and the various figures showing the relationships between elements 31, 34 and 35.

## **B. The Final Office Action**

### **i. Section 1**

In Section 1 of the final Office Action mailed March 21, 2008, the Examiner has made objections or rejections of the drawings or specification or claims without citing any legal authority. Such unsupported objections/rejections violate MPEP 707.07(d). At present, Applicants can not determine the particular legal authority for these objections or rejections, in view of the mention of drawings, reference numbers and claims in a single ground for objection or rejection.

Consequently, because no legal basis was identified or can be readily discerned, the objections or rejections made in Section 1 are legally unsupported and thus improper.

Withdrawal of these objections or rejections is thereby warranted for at least this reason.

Moreover, Section 1 begins with “Claims, elected for prosecution, ....” It is noted for the record that no claims have been “elected” for prosecution thus far in accordance with the meaning of the term “election” found in MPEP 800. All of claims 11-33 are entitled to examination as satisfying the unity of invention standard in accordance with Rule 13 PCT, which is applicable to this US national stage application.

Without acquiescing or binding the Applicants in any way, an attempt will be made to address the concerns of the Examiner.

With respect to reference number 24, it is noted that this reference number is not recited in any of the claims. Therefore, a rejection of the claims under Section 112, second paragraph is factually and legally unsupported, despite the Examiner’s assertion that the allegedly confusing use of this reference number “fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention”.

Furthermore, the two terms identified with reference number 24 in the specification, namely “two outer areas” (paragraph [0037]) and “side roof parts” (paragraphs [0045]-[0046], [0049]) are clearly synonymous when considered together with Figs. 1-8, 10, 13 and 19. It is respectfully submitted that a person of ordinary skill in the art could not possibly be confused about the teachings relating to these elements, after having read the entire specification in view of the drawings. Elements 24 are disposed outside of element 22 and elements 24 are disposed on the side of element 22 when view along the longitudinal direction of the roof structure.

Finally, although pending claims 19, 24 and 33 broadly read onto these features, none of these claims utilizes either of these terms. Therefore, there simply can be no confusion when reading and understanding the claims.

Therefore, in the absence of an identifiable legal basis for this objection or rejection and the fact that a person of ordinary skill in the art would not have any difficulty understanding how to practice the invention, such that neither Section 112, first paragraph nor Rule 71(a) is violated in any way, this ground for objection or rejection is not legally and factually substantiated, thereby requiring withdrawal thereof.

With respect to reference number 16, the same grounds for traversing this objection or rejection apply and are incorporated herein by reference. That is, in the absence of any asserted legal basis for this objection or rejection, the Applicants are incapable of determining whether the Examiner has satisfied his burden of proof. Consequently, failure to identify the legal ground requires withdrawal of this objection or rejection.

Furthermore, because reference number 16 is not recited in any of the pending claims, any rejection of the claims under Section 112, second paragraph is not factually supported.

Moreover, while two different terms are utilized in the description for reference number 16, namely “rear roof part” and “convertible top compartment lid”, paragraphs [0036], [0045] and [0046] (see e.g., “rear roof part (convertible top compartment lid) 16” at page 8, lines 3-4 of the specification) clearly establish that these terms are synonymous, especially when considered together with Figs. 1-4, 6, 7, 9, 11, 12, 14, 15, 17, 18 and 20. Again, it is respectfully submitted that a person of ordinary skill in the art could, in no possible way, be confused about the teaching relating to this element, after having read the entire specification in view of the drawings.

Further, although pending claims 12, 23, 25, 27 and 32 utilize the term “convertible top compartment lid”, no claim utilizes the term “rear roof part”. Therefore, a person of ordinary skill in the art would find no inconsistency or have any possible confusion when reading and interpreting the claims.

Only one instance of “roof part 16” was found in the original description and paragraph [0043] has been amended herewith to introduce the word “rear” before this entry.

Finally, it is noted that MPEP 608.01(g) confirms the applicant’s entitlement to use his or her own terminology as long as it can be understood. There is absolutely no prohibition on identifying the same feature with two different, but synonymous terms when a person of ordinary

skill would not be confused, as is the case with respect to the elements identified by reference numbers 16 and 24.

For all the foregoing reasons, the objections or rejections made in Section 1 of the final Office Action require withdrawal.

## ii. Section 2

In Section 2 of the final Office Action, the Examiner alleged that the drawings do not show all features of the claims in accordance with Rule 83(a). It is first noted that, for all intents and purposes, the Applicants already clearly demonstrated at pages 5-8 of the Amendment filed November 15, 2007 that all claimed features are supported by the original description and are shown in the drawings. However, in order to make it even easier for the Examiner to understand a representative, non-limiting embodiment covered by claims 11 and 25, the following Table will be provided to show a correlation between features of claims 11 and 25 and representative, non-limiting embodiments disclosed in the present specification.

However, before proceeding, it is to be understood that the following Table is, in no way, intended to, or should have the effect of, limiting the scope of protection. Only a single detailed embodiment need be disclosed for the purpose of satisfying the enablement requirement of Section 112, first paragraph. Applicants have fully complied with this requirement. In addition, Applicants have expressly mentioned in the specification various modifications that may be made to the disclosed preferred embodiment(s) without departing from the scope or the spirit of the present invention. Moreover, additional modifications to the disclosed preferred embodiment will be readily apparent to a person of ordinary skill in the art upon reading the description in view of the drawings. Such obvious modifications are also to be considered as part of the original disclosure as well as encompassed by the pending claims.

Simply stated, no prosecution history estoppel or restriction of the claim scope is warranted in view of the following discussion, in part because the present drawing objection is clearly erroneous and would not have been made, had a closer review of the specification in view of the drawings been made prior to issuing the latest Office Action.

For the convenience of the Examiner, it is noted that certain features of claims 11 and 25 will be recited in the following Table with corresponding reference numbers, and a listing of Figures in which the feature(s) is/are shown, as well as representative, but not limiting, description in the specification that may further assist the Examiner's understanding.

TABLE

Claim feature	Figures	Specification
a linkage mechanism (30-35) arranged and constructed to move the roof part (12) between the closed position and the opened position	<p>2-4, 6, 7, 9-12, 15, 27, 18, 20</p> <p>The closed position of the roof part (12) is shown, e.g., in Figs. 1-4 and the fully opened position of the roof part (12) is shown, e.g., in Figs. 19 and 20. Figs. 5-18 show the roof part (12) in various intermediate stages between the fully closed and fully opened positions.</p> <p>The elements 31-35 represent a non-limiting example of a representative linkage mechanism (30) for moving the roof part (12) between its opened and closed positions. It is noted that the term “linkage mechanism” is not a means plus function limitation and should not be interpreted in accordance with Section 112, sixth paragraph.</p> <p>In addition, although a guide roller (42) attached to the (second) linkage mechanism (36), which is coupled to the rear roof part (16) and the vehicle body, assists in directing the movement of the roof part (12) during a portion or segment of the movement path between the closed and open positions, linkage mechanism (36) is not subsumed in this feature of claims 11 and 25.</p>	[0039]-[0041], [0046]
at least one guide device (40 and/or 42) arranged and	2, 4, 6, 7, 9, 11, 12, 14-18	[0043]

<p>constructed to contact the roof part (12) during one segment of the movement path between the opened position and the closed position</p>	<p>Contact of at least one guide device (40 or 42) and the roof part (12) is specifically shown in Figs. 9, 11, 12, 14-18.</p> <p>Two guide devices (40, 42) are shown contacting the roof part (12), e.g., in Figs. 15 and 16, although it is noted that claims 11 and 25 only require at least one guide device. These claims should not be read as requiring two or more guide devices, although such embodiments are, of course, covered by claims 11 and 25.</p>	<p>see also [0009], [0048] (see Amendment filed November 15, 2007 for a corrected version of [0048]) and [0050]</p>
<p>the guide device includes at least one guide element (40) arranged and constructed to be supported on the convertible top compartment lid (16) []</p>	<p>2, 4, 6, 7, 9, 11, 12, 14-18</p> <p>The guide element (40) is supported on the convertible top compartment lid (rear roof part) 16 via an arm (not numbered, but clearly shown in the above-noted Figures).</p>	<p>[0043]</p>
<p>the guide device includes at least one guide element (42) arranged and constructed to be supported on [] the vehicle body</p>	<p>2, 4, 6, 7, 9, 11, 12, 14-18</p> <p>The guide element (42) is supported on the vehicle body via the linkage mechanism (36).</p> <p>As is explicitly and unmistakably indicated by the claim language, only one guide device and only one guide element (i.e. 40 or 42) is respectively required by claims 11 and 25, although claims 11 and 25 of course cover embodiments having two or more guide devices and two or more guide elements.</p> <p>Thus, although the preferred embodiment</p>	<p>[0043]</p>

	<p>shown in Figs. 1-20 in fact shows two guide devices and two guide elements (40 and 42) as a representative, not-limiting example of one application of the present teachings, claims 11 and 25 should not be interpreted as being limited to the features of the depicted embodiment.</p>	
<p>the at least one guide element (40 or 42) being arranged and constructed to contact and then move along a guide path (44) defined on the roof part (12) when the roof part (12) is moving from its closed position to its opened position</p>	<p>9, 11, 12, 14-18</p>	<p>[0047]</p>
<p>and thereby effect a directional change of the movement path of the roof part (12) when the guide device (40 or 42) arrives in contact with the roof part</p>	<p>Of course, it is not possible to represent continuous movement with static drawings. Therefore, Rule 83(a) can not be interpreted as requiring a type of illustration that is not possible to achieve within the confines of the drawing requirements imposed by the patent code and regulations.</p> <p>However, without limiting the scope of the invention in any way, it is noted that a comparison of Figs. 7 and 8 with Figs. 9-14 shows a representative first directional change caused by guide device (40) contacting the guide path (44) on the roof part (12).</p> <p>In the alternative, a comparison of Figs. 9-14</p>	<p>[0048]-[0052]</p>

	<p>with Figs. 15-20 shows a second directional change of the movement path of the roof part (12) caused by guide device (42) contacting the guide path (44) of the roof part (12).</p> <p>Again, claims 11 and 25 only recite a single directional change and thus, these claims should not be interpreted as requiring two or more directional changes, as shown in a representative, but not limiting, manner in the embodiment of Figs. 1-20, although claims 11 and 25 certainly cover embodiments that are arranged and constructed such that two or more directional changes take place.</p>	
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Thus, as established by this Table, all features of claims 11 and 25 identified in Section 2 of the final Office Action are clearly and unmistakably shown in one or more Figures, such that the objection to the drawings pursuant to Rule 83(a) is clearly erroneous and must be withdrawn.

### iii. Section 3

In Section 3 of the final Office Action, the Examiner made an objection or rejection without identifying any legal basis therefor. Once again, this objection or rejection is inappropriate for the same reasons discussed above with respect to Section 1 of the final Office Action, as the Applicants can not discern the legal authority for this objection or rejection, nor whether the Examiner has satisfied his burden of proof.

That is, unless and until the Examiner identifies a legal basis for this objection in accordance with MPEP 707.07(d), it has not been properly made. Examiners do not have plenary powers to make objections or rejections as they please. Only objections or rejections based upon the patent code, regulations or MPEP are permissible, and then only if the Examiner has satisfied the necessary evidentiary burden.

However, without acquiescing to this ground for objection or rejection and in order to further the prosecution of this application, it is first noted that the Examiner appears to be

objecting to or rejecting paragraph [0036] of the specification. If another portion of the specification or claims is of concern, the Examiner is respectfully requested to expressly identify it, although this time with an identification of the legal authority for this objection or rejection.

Paragraph [0036] indicates that a first embodiment is disclosed in Figs. 1-4. It is noted that other portions of the specification suggest modifications to the preferred embodiment shown in detail in Figs. 1-20, which modifications would constitute second, third, etc. embodiments of the present teachings.

For example, paragraph [0043], last sentence, indicates that the roller pairs 40, 42 shown in the various Figures may be replaced with other shifting or sliding elements, such as e.g., sliding shoes. Thus, this modification would certainly constitute one or more alternate (i.e. second, third, fourth, etc.) embodiments of the present teachings.

In addition, paragraphs [0039], [0049] and [0052] indicate that various different drive mechanisms may be utilized for moving the roof part and/or the convertible top compartment lid, each of which would constitute further alternate embodiments of the present teachings.

Moreover, paragraph [0054] indicates that the linkage assembly and pneumatic spring (e.g., 30-35, 36) shown in the Figures may be replaced with other biasing and/or moving devices, thereby defining additional alternate embodiments of the present teachings.

Consequently, because the specification teaches or suggests more than one preferred embodiment of the present teachings, the use of “first embodiment” in paragraph [0036] is believed to be entirely appropriate and there is no need for amendment.

As no person of ordinary skill in the art, who has read the entire specification, could possibly be confused by the use of the “first embodiment” in paragraph [0036], it is respectfully requested to withdraw this ground for objection or rejection, regardless of which legal authority the Examiner is basing this rejection upon.

#### **iv. Section 4**

Next, in a substantial repeat of the non-final Office Action of August 15, 2007, claims 11-33 were rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the “written description requirement”, because the claims allegedly contain “subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention”.

Again, no rejection under 35 U.S.C. 112, second paragraph was made in the final Office Action.

Except for the new ground for rejection raised against the “at least one guide device”, “at least one guide element” and “a guide path”, all of these rejections were fully addressed in the Amendment filed November 15, 2007.

The Examiner’s complete failure to address the remarks provided in Amendment filed November 15, 2007 is a clear violation of MPEP 707.07(f). In order to avoid further deviations from the mandated guidelines and to advance the examination of this application in good faith, the Examiner is respectfully requested to particularly point out any alleged inadequacy, if any, in the arguments provided in the Amendment filed November 15, 2007.

However, it is believed that the previously submitted arguments fully overcome all of the Section 112, first paragraph rejections and these arguments are incorporated herein by reference, as if fully set forth herein.

Before proceeding to this supplemental discussion, it must again be noted for the record that no prior art or lack of enablement objection has been made and thus no prosecution history estoppel effect is warranted by this recitation of support. The Examiner has performed a search, as indicated by the Form PTO-892 attached to the non-final Office Action mailed August 15, 2007 and has an obligation to consider all possible grounds for rejection under 35 U.S.C. 101, 102, 103 and 112 prior to making a written description rejection. MPEP 2163. Failure to identify any other ground for rejection can only lead to the conclusion that either (i) no such ground for rejection exists or (ii) the Examiner has failed to comply with the guidelines.

Moreover, it is again noted that the claimed invention is not restricted to the preferred embodiment and it is expressly stated that nothing in this response should be interpreted as limiting the claimed invention in any way.

Furthermore, although the final Office Action states that claims 11-33 are rejected under 35 U.S.C. 112, first paragraph, the Examiner has only identified features of claims 11 and 25. Therefore, there is no factual basis for rejecting claims 12-24 and 26-33 independent of the rejection of claims 11 and 25. Consequently, because none of claims 12-24 or 26-33 can be considered finally rejected, the Applicant has a right to amend those dependent claims at this time, even if the finality of the Office Action mailed March 21, 2008 is not withdrawn.

As the first ground for objection according to 35 U.S.C. 112, first paragraph, claims 11 and 25 were rejected due to the recitation of “a linkage mechanism arranged and constructed to

move the roof part between the closed position and the opened position". As was demonstrated in the Table above, elements 30-35 constitute a linkage mechanism arranged and constructed to move the roof part 12 between the closed position and the opened position.

Therefore, a preferred embodiment of the linkage mechanism of claims 11 and 25 is clearly disclosed by the original description. Moreover, the terminology utilized in claims 11 and 25 is also originally disclosed in original claim 1, such that the written description rejection thereof should be withdrawn.

It is noted that this information was previously given at page 7, line 9 to page 8, line 2 of the Amendment filed November 15, 2007. Only negative conclusions can be drawn as to why the Examiner would repeat the rejection of the "linkage mechanism" based upon element 36, when the Amendment filed November 15, 2007 clearly explained that linkage mechanism 30, which includes elements 31-35, provides the support for the linkage mechanism feature of claims 11 and 25.

As the second ground for objection according to 35 U.S.C. 112, first paragraph, claims 11 and 25 were rejected due to the recitation of "at least one guide element arranged and constructed to be supported on the convertible top compartment lid".

Again, as was indicated in the above Table, roller 40 constitutes a representative example of a guide element supported on the convertible top compartment lid.

Roller 42 is supported on the vehicle body via the linkage mechanism 36 and thus provides a representative example of the alternate embodiment covered by claims 11 and 25.

That is, claims 11 and 25 use an alternative expression in accordance with MPEP 2173.05(h)(II). Both embodiments covered by claims 11 and 25, i.e. a guide element 40 supported on the convertible top compartment lid 16 and a guide element 42 supported on the vehicle body, are clearly disclosed in the original description and claims.

Furthermore, at page 6, line 17 to page 7, line 8 of the Amendment filed November 15, 2007, Applicants previously identified support in the original description for this feature. The Examiner has failed to further the examination of this application by completely failing to address why the Applicant's previously submitted evidence and arguments are insufficient.

As this feature is also clearly supported by the original written description, this rejection also should be withdrawn.

As the third ground for objection according to 35 U.S.C. 112, first paragraph, claims 11 and 25 were rejected due to the recitation "at least one guide device arranged and constructed to

contact the roof part during one segment of the movement path between the opened position and the closed position, wherein the guide device includes at least one guide element arranged and constructed to be supported on the convertible top compartment lid or the vehicle body, the at least one guide element being arranged and constructed to contact and then move along a guide path defined on the roof part when the roof part is moving from its closed position to its opened position and thereby effect a directional change of the movement path of the roof part when the guide device arrives in contact with the roof part”.

At page 8, lines 3-24 of the Amendment filed November 15, 2007, Applicants already clearly demonstrated why the Examiner incorrectly identified path 33 as a guide device in accordance with claims 11 and 25. Therefore, it is not necessary to further respond to this needless repetition of an improper rejection in the absence of any evidence from the Examiner as to how this previously identified evidence of written description is insufficient.

Moreover, it is noted that additional support for the last feature of claims 11 and 25 is further provided by the Table above.

This ground for rejection also being clearly erroneous, withdrawal is required.

As the fourth ground for objection according to 35 U.S.C. 112, first paragraph, the expression “arranged and constructed” was recited and the Examiner stated “It is not clear what is the claimed limitation.”

Again, this rejection was fully addressed at page 5, line 10 to page 6, line 14 of the Amendment filed November 15, 2007. It is necessary to repeat that only negative conclusions can be drawn concerning why the Examiner would simply repeat this rejection without substantively addressing the Applicants’ response in any way.

Additional arguments against this rejection were provided at page 8, Section C of the above-noted Petition, which additional arguments are incorporated herein by reference.

Withdrawal of this rejection is clearly warranted in the absence of any apparent non-arbitrary and capricious reason for maintaining it.

Finally, as the fifth (and new) ground for rejection under Section 112, first paragraph, the Examiner has taken the position it is not clear what are the “at least one guide device”, “at least one guide element” and “a guide path.”

As support for these elements is provided in the Table above, this support need not be repeated in detail here. It suffices to state that rollers 40 and 42 provide representative, non-limiting examples of a guide element. Guide devices comprise at least one guide element and

e.g., a structure for mounting, connecting, attaching, coupling, etc. the guide element(s) to the corresponding structure, i.e. the convertible top compartment lid or the vehicle body. Such structures may, e.g., include, but are not limited to, the arm connecting the roller 40 to the convertible top compartment lid shown, e.g., in Fig. 2 and the linkage mechanism 36 connecting the roller 42 to the vehicle body, as also shown, e.g., in Fig. 2.

Guide path 44 is, of course, a representative, non-limiting example of a guide path according to claims 11 and 25.

Again, this information was previously provided at page 8, lines 8-19 of the Amendment filed November 15, 2007 and Applicants are unable to understand why the Examiner would ignore the previously submitted evidence and arguments, as well as the clear description in the specification and drawings, to reject the claims for this reason.

For all the foregoing reasons, it is believed that all of the rejections made in the final Office Action of March 21, 2008 have been overcome and should be withdrawn.

Therefore, it is respectfully requested to pass this application to allowance.

However, if the Examiner is not inclined to allow the application at this time, Applicants object to the implication in Section 5 of the final Office Action that the restriction and species election requirements could be re-asserted, despite the fact that such action would be clearly erroneous. Applicants continue to maintain their objection to any imposition of a requirement in accordance with MPEP 800 in this US national stage application, which is governed by Rule 13 PCT and MPEP 1850 and 1893.03(d).

Finally, the Examiner is respectfully requested to refrain from making any further new grounds for objection or rejection not necessitated by claim amendments or new prior art in a final Office Action. MPEP 706.07(a). In addition, it is requested that all further communications concerning this application be made in writing.

Respectfully submitted,

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